

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR AND ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**  
**Before the Commissioner of Financial and Insurance Services**

In the matter of

XXXXX

Petitioner

File No. 85129-001

v

Physicians Health Plan of Mid-Michigan  
Respondent

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Issued and entered  
this 26<sup>th</sup> day of November 2007  
by Ken Ross  
Acting Commissioner

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On September 17, 2007, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On September 24, 2007, after a preliminary review of the material submitted, the Commissioner accepted the request.

Initially this case appeared to involve only contractual issues so the Commissioner did not assign it to an independent review organization (IRO) for review by a medical professional. Upon further evaluation the Commissioner determined this case would benefit from review by an outside expert and assigned it to an IRO. On October 29, 2007, the IRO completed its review and sent its recommendation to the Office of Financial and Insurance Services.

**II**  
**FACTUAL BACKGROUND**

The Petitioner, born XXXXX, 1997, is a member of Physicians Health Plan of Mid-Michigan (PHP) as an eligible dependent. His health care benefits are defined in the PHP Plus certificate of coverage (the certificate). The certificate provides for both network and non-network benefits. To obtain in-network benefits, the care must be provided by an in-network provider. Care from non-network providers may be covered but it generally comes with a higher out-of-pocket cost for the PHP member. The certificate permits in-network-level benefits for out-of-network services only when the services are not available from network providers.

The Petitioner was diagnosed with atopic dermatitis (eczema) at an early age. In March 2007, the Petitioner requested coverage at the in-network level from PHP for dermatology care from XXXXX, MD, at XXXXX. Dr. XXXXX and XXXXX are not in PHP's provider network and PHP denied coverage at the in-network level, saying that dermatology services are available within the PHP network. PHP did say that Dr. XXXXX's services would be covered at the non-network level.

The Petitioner appealed the denial through PHP's internal grievance system. PHP issued a final adverse determination dated July 13, 2007.

### **III ISSUE**

Did Respondent PHP properly deny the Petitioner network coverage for dermatology services from a non-network provider?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner wants PHP to cover ongoing services he wants from a non-network provider at the network level of benefits. It is his contention that the necessary care is not available from PHP's network providers.

The Petitioner's father says, "My wife took the liberty of contacting each and every

dermatologist within the PHPMM Provider Network as listed in the request for coverage denial letter.<sup>1</sup> Not a single one was taking new patients within a reasonable time frame and not a single one was a board certified Pediatric Dermatologist.”

The Petitioner’s father says his son’s skin is sometimes so inflamed that he cannot go to school or participate in organized activities. He says that his son has used more than a dozen various creams, lotions, and prescription medications, and seen four local doctors (none pediatric dermatologists) for his atopic dermatitis but his physicians have yet to find a permanent solution.

The Petitioner contends that treatment with Dr. XXXXX is medically necessary because he is a pediatric dermatology specialist and is aware of the latest research on dermatology in children. According to the Petitioner’s father, Dr. XXXXX has already advised the family that some of the medications the Petitioner has taken in the past can have long-term adverse effects in children. PHP approved one visit at the network level with Dr. XXXXX and the Petitioner wants to continue to treat with Dr. XXXXX to insure continuity of care.

The Petitioner argues that PHP’s network is inadequate in that it does not include a pediatric dermatologist and his only choice is to obtain the specialty services from a provider in a larger metropolitan community. Therefore, the Petitioner believes that PHP should be required to pay for dermatology care from a non-network provider (Dr. XXXXX) at the in-network level.

#### PHP’s Argument

In its July 13, 2007, final adverse determination PHP denied dermatology services at the in-network level from a non-network provider because it says those services are available within its network. In support of its decision, PHP cites provisions in Section 1 and Section 3 of the certificate:

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1. PHP’s initial denial letter dated May 8, 2007.

## **Section 1: What's Covered – Benefits**

### **Accessing Benefits**

You can choose to receive either Network Benefits or Non-network Benefits. To obtain Network Benefits, Covered Health Services must be provided by a Network Physician or other Network provider in the Physician's office or at a Network facility. For facility services, Network Benefits apply to Covered Health Services that are provided at a Network facility by or under the direction of either a Network or non-Network Physician or other provider. For details about when Network Benefits apply see Section 3: Description of Network and Non-Network Benefits.

\* \* \*

## **Section 3: Description of Network and Non-Network Benefits**

### **Network Benefits**

Network Benefits are generally paid at a higher level than Non-Network Benefits. Network Benefits are payable for Covered Health Service which are:

- Provided by or under the direction of a Network Physician in a Network Physician's office or at a Network facility.
- Emergency Health Services.
- Urgent Care Center services.

\* \* \*

### ***Health Services from Non-Network Providers Paid as Network Benefits***

If we determine that specific Covered Health Services are not available from a Network provider, you may be eligible for Network Benefits when Covered Health Services are received from non-Network providers. In this situation, your Network Physician will notify us, and we will work with you and your Network Physician to coordinate care through a non-Network provider. \* \* \* Non-Network Benefits may be available if the services you receive are Covered Health Services for which Benefits are provided under the Policy.

### **Non-Network Benefits**

Non-Network Benefits are generally paid at a lower level than Network Benefits. Non-network Benefits are payable for Covered Health Services which are any of the following:

- Provided by a non-Network Physician or other non-Network provider.
- Provided at a non-Network facility.

PHP did make an exception and allowed one consultation with Dr. XXXXX. In its May 8, 2007, letter, PHP said:

This approval is limited to one office visit only in the specified time frame of 5/30/07, as long as you remain eligible for benefits under your health plan at the time the services are rendered. This service is subject to your office co-payment. Please understand that the decision to provide coverage for an office visit with Tor XXXXX, MD is a one-time approval that is being provided solely under the terms outlined in this letter. This approval will not be extended beyond the terms described above, nor will it be extended or duplicated for you and/or others.

The letter also included the names of network dermatologists (not an all-inclusive list) and PHP also advised the Petitioner that additional network providers could be obtained from the provider directory or by contacting PHP's customer service department.

PHP says the services the Petitioner needs are available in network, and therefore, based on the language in the certificate, the services from Dr. XXXXX should be covered at the non-network level.

#### Commissioner's Review

As stated previously, the certificate permits in-network-level benefits for out-of-network services only when the services are not available from network providers. That provision is consistent with state law. Section 3530(2) of the Insurance Code of 1956, MCL 500.3530(2), provides:

If a health maintenance organization has an insufficient number or type of participating providers to provide a covered benefit, the health maintenance organization shall ensure that the enrollee obtains the covered benefit at no greater cost to the enrollee than if the benefit were obtained from participating providers, or shall make other arrangements acceptable to the commissioner.

PHP asserts that the Petitioner has to use a network dermatologist in order to receive in-network coverage for the services. PHP, while it approved one office visit, did not approve in-network coverage for ongoing care from Dr. XXXXX or XXXXX because they are not network

providers. PHP says that if the Petitioner elects to receive dermatology care from Dr. XXXXX it will be covered at the non-network level.

There is no question that general dermatology services are available from network doctors. However, the Petitioner's believes his need for services from a pediatric dermatologist is a matter of medical necessity and not simply a preference.

To answer the question of whether care from a pediatric dermatologist is medically necessary in this case, the Commissioner requested an analysis and recommendation from an IRO. The IRO reviewer is board certified in dermatology, holds an academic appointment, and has been in practice more than ten years.

The IRO reviewer determined that:

based upon the information available for review, an annual visit to a pediatric dermatologist is medically necessary to assess the member's condition and direct his care. \* \* \* [I]nterim care by a dermatologist who regularly treats children is reasonable under the circumstances presented in this case.

The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the Commissioner finds no reason to reject it. The Commissioner therefore makes the following findings:

1. Ongoing care for the Petitioner's dermatological condition does not have to be provided by a pediatric dermatologist as long as it is provided by a dermatologist who regularly treats children.

2. PHP must also, as long as medically necessary, provide the Petitioner with one visit annually to a pediatric dermatologist who will assess his condition and direct his care. It appears that the Petitioner has received that one visit in 2007 (the visit with Dr. XXXXX). Since nothing in the record shows that PHP has a pediatric dermatologist in its network, PHP must cover the Petitioner's future annual visits to Dr. XXXXX (or another qualified pediatric

dermatologist) as if it were a network benefit and at no greater cost than a network-level benefit, until such time as PHP has a pediatric dermatologist in its network.

**V  
ORDER**

PHP's July 13, 2007, final adverse determination is upheld in part. PHP is not required to cover ongoing care for the Petitioner from a pediatric dermatologist. PHP shall cover ongoing care, as long as medically necessary, from a dermatologist who regularly treats children. PHP shall also cover, as long as medically necessary, one visit annually to a qualified pediatric dermatologist. If PHP does not have a dermatologist who regularly treats children or a pediatric dermatologist in its network, it must cover the Petitioner's care from non-network providers as if it were a network benefit and at no greater cost to the Petitioner than a network-level benefit.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.